IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 88 OF 2004

(1) Shri Vincente Palha
alias Vincente Palke
(since deceased),
represented by his
legal heirs:

(a) Smt. Damian Palha,
wife of deceased
Vincente Palha;

(b) Master Melwyn Palha,
son of deceased
Vincente Palha;

(c) Master Hubert Palha,
son of deceased
Vincente Palha;

(d) Ms. Helen Palha,
daughter of deceased
Vincente Palha;

(e) Ms. maria Goretti Palha,
daughter of deceased
Vincente Palha,

All residents of Agacaim,
presently residing at
Sonarbhat, Saligao,
Bardez-Goa. ... Appellants

versus

Mr. Jeffrey Fernandes,
aged 70 years, son of

late Manuel Francisco
Fernandes alias Manuel
Francisco Antonio Fernandes,
retired, resident of Sonarbhat,
Saligao, Bardez-Goa. ... Respondent

Mr. D. Pangam, Advocate for the Appellants.

Mr. N. Sardessai, Advocate for the Respondent.

CORAM : N. A. BRITTO, J.

DATE : 29TH JUNE, 2006.

ORAL JUDGMENT

Heard the learned Counsel on behalf of the parties.

2. This is defendants' second appeal arising from Special Civil Suit No.46/1994/Sr and was admitted by Order of this Court dated 16-12-2004 on substantial question of law which reads as follows:

> "Whether the lower appellate Court held in error in proceeding to decide issue nos.1 to 3 unless the issue regarding tenancy was decided by the appropriate forum under Section 56 of the Rent Control Act, 1968 while holding that the

> trial court/civil court had no jurisdiction to decide the said issue".

3. The above substantial question presumably has arisen in view of the observations of the F.A.C.(First Appellate Court) because of an observation of the learned F.A.C. in para 13 of the Judgment wherein it was observed that the jurisdiction of the Civil Court to deal with the issue of tenancy in respect of the residential premises is barred in view of Section 56 of the Rent Control Act, 1968. Concededly and in my view rightly, whether a person is a tenant or not under the G.D.D. Rent(L.R.E.) Control Act, 1968 has got to be decided by the Civil Court and the said wrong statement of law by the learned F.A.C. ought not to have given rise to a substantial question of law.

4. The plaintiff's suit was for the eviction of the defendants from the entrance room/hall of house no.6/15 which admittedly belonged to Manuel Fernandes, the father of the plaintiff Jeffrey Fernandes. It was the case of the plaintiff that the said house was being looked after by Vincent Wilfred D'Souza as their watch and ward and till about the year 1985 the

entire suit house was in possession of the plaintiff. The plaintiff was residing at the relevant time at Asansol, West Bengal. The case of the plaintiff was that when he came down in December, 1992 and visited the said Vincent Wilfred D'Souza in order to take the key of the house from him he was informed by the said D'Souza that he had permitted the defendants to occupy the said entrance room/hall as temporary shelter whereupon the plaintiff took the said D'Souza and went to the suit house with a view to direct the defendants to vacate the said room/hall and at which time the said D'Souza informed the defendants that they had to quit and vacate the said room as the plaintiff and his family members had come down to reside in the said suit house and the said D'Souza also informed the defendants that he was not authorized to permit the defendants to occupy the said room and that he had acceded to the request of the respondents purely on humanitarian grounds. The plaintiff stated that the defendants had their house at Agacaim. It was the case of the plaintiff that the said D'Souza had brought to the notice of the defendants in the presence of the plaintiff that although the initial period of six months had expired in June, 1986 the defendants had not vacated the said room of the house although they had agreed

and promised to do so and that they had kept promising that they would vacate the said room but had failed to keep up their promise. Thereafter, the plaintiff served a notice dated 11-1-1993 on the defendants calling upon them to vacate the said room and subsequently filed the said Civil Suit.

5. The plea of the defendants was that the defendants had occupied the said room in the year 1983 on the explicit understanding that they would be the tenants of the same and would not be told to get out on the basis of the whims and fancies of the owner or his Attorney Holder. It was the case of the defendants that the said Vincent Wilfred D'Souza had explicitly agreed that they would be entitled to stay there as long as they paid the said rent of the hall of Rs.30/-. However, it was not the case of the defendants at all that they ever paid the rent they were allegedly told to pay either to the said Vincent Wilfred D'Souza or the plaintiff, at any time.

6. Although, the learned trial Court dismissed the suit of the plaintiff on the ground that the plaintiff had not proved the ownership of the said house, the learned F.A.C. has reversed the

said finding in appeal filed by the plaintiff. In fact, there was never a serious dispute that the house belonged to the plaintiff and except for the said room the remaining portion of the house was in possession of the plaintiff. The learned F.A.C. upon an analysis of the evidence led by both the parties has come to the conclusion that the defendants have failed to prove that they are the tenants of the said room of the house.

7. It is the contention of Mr. D. Pangam, the learned Counsel on behalf of the defendants that the burden was on the plaintiff to prove that the defendants were put in possession by the said Vincent Wilfred D'Souza without the authority of the plaintiff. This the plaintiff had proved. It was for the defendants to prove that he was inducted as a tenant by the said D'Souza. In fact, the defendants had not produced any rent receipt nor examined the said D'Souza in support of the said plea. Admittedly, the house belonged to the plaintiff. Admittedly also the defendants came in possession of the said room through the plaintiff's caretaker, the said Vincent Wilfred D'Souza. The defendants had failed to prove that their relationship either with the said Vincent Wilfred D'Souza or with the plaintiff, through

him, was one of tenancy on payment of rent. In fact, the defendants were unable to prove the payment of any rent to the said Vincent Wilfred D'Souza or to the plaintiff. The defendants did not at all examine the said Vincent Wilfred D'Souza in support of the plea taken by them. As already observed, on consideration of evidence produced, the learned F.A.C. has come to the conclusion that the claim of tenancy put forward by the defendants has not been proved. That is a conclusion of fact that cannot be assailed in this second appeal.

8. Having concluded that jurisdiction to decide whether a person is a tenant or not under the G.D.D.Rent(L.R.E.) Control Act, 1968 is that of the Civil Court and the Civil Court having decided that the defendants are not the tenants in respect of the said room of the house belonging to the plaintiff nothing survives in this second appeal and consequently the same is hereby dismissed.

N. A. BRITTO, J.

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